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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

JAMES POINT,	)	No. C 07-6398 EDL
	)	
Plaintiff,	)	<b>JOINT CASE MANAGEMENT</b>
	)	<b>STATEMENT AND [PROPOSED] CASE</b>
v.	)	<b>MANAGEMENT ORDER</b>
	)	
UNITED STATES OF AMERICA, and	)	Date: August 26, 2008
DOES 1-10, Inclusive,	)	Time: 10:00 a.m.
	)	Place: Courtroom E, 15th Fl.
Defendants.	)	

Pursuant to Federal Rule of Civil Procedure 26 and the Order Setting Case Management Conference dated July 24, 2008, the parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

**1. JURISDICTION AND SERVICE**

This action is brought under the Federal Tort Claims Act, 28 U.S.C. sec. 1346(b)(1).



1 On April 9, 2008, plaintiff filed a first amended complaint. Plaintiff has completed service of the  
2 first amended complaint. On June 5, 2008, defendant filed an answer and counterclaim. Plaintiff  
3 has filed an answer to defendant's counterclaim.

## 4 **2. FACTS**

### 5 **A. Brief chronology of the facts:**

6 Plaintiff alleges that on or about December 28, 2005, he was a passenger in a tractor-  
7 trailer truck driven by his girlfriend, Brenda Sherrard. Plaintiff further alleges that at or near the  
8 intersection of Third Street and Evans Avenue in San Francisco, California, a United States  
9 Postal Service ("USPS") truck operated by USPS driver, Kelvin Hill, collided with the truck in  
10 which plaintiff was riding. Plaintiff alleges that as a result of the collision he suffered physical  
11 injuries, wage loss and damage to his personal property.

12 Defendant denies the allegations and contends that plaintiff caused the accident by  
13 running a red light.

### 14 **B. The principal factual issues in dispute:**

15 The parties believe the following factual issues are presently in dispute:

- 16 (1) Whether plaintiff was the driver of the tractor-trailer involved in the collision.  
17 (2) Whether plaintiff's alleged injuries were proximately caused by negligent or otherwise  
18 wrongful acts or omissions of defendant.  
19 (3) Whether plaintiff's alleged injuries were proximately caused by negligent or otherwise  
20 wrongful acts or omissions of plaintiff.  
21 (4) Whether plaintiff's alleged injuries were proximately caused by negligent or otherwise  
22 wrongful acts or omissions of a third party.  
23 (5) The percentage of fault of the plaintiff and/or other third party in plaintiff's alleged injuries.  
24 (6) The amount and nature of any damages plaintiff has suffered due to the alleged accident.

## 25 **3. LEGAL ISSUES**

26 The parties believe the following legal issues are presently in dispute:

- 27 (1) Whether plaintiff can prove the injuries and damages claimed in the complaint resulted  
28 from defendant's negligence.



(2) Whether plaintiff is entitled to the compensatory relief and damages claimed in the amended complaint.

#### **4. MOTIONS**

No prior motions have been filed, and no motions are pending. Following additional discovery regarding the facts surrounding the December 28, 2005 vehicular accident, defendant may move for leave, pursuant to Federal Rule of Civil Procedure 14, to bring a third-party complaint for property damage to the USPS truck against Ms. Sherrard.

Following expert consultation and discovery, defendant might move for summary judgment or adjudication of issues under Federal Rule of Civil Procedure 56. Defendant anticipates filing discovery motions if the need arises.

#### **5. AMENDMENT OF PLEADINGS**

\_\_\_\_\_ Following additional discovery regarding the facts surrounding the vehicular accident, defendant may seek leave to bring a third-party complaint for property damage to the USPS truck against Ms. Sherrard.

#### **6. EVIDENCE PRESERVATION**

Defendant is taking, and will continue to take, all reasonable steps to preserve any evidence relevant to the issues reasonably evident in this lawsuit. Defendant is presently aware of no document destruction programs that would apply in this case.

#### **7. DISCLOSURES**

\_\_\_\_\_ The parties have served initial disclosures pursuant to Federal Rule of Civil Procedure 26.

#### **8. DISCOVERY**

##### **A. Scope of Discovery to Date**

The parties have served initial disclosures. Defendant has served written discovery requests and has taken plaintiff's deposition. A deposition of Ms. Sherrard is tentatively scheduled for August 27, 2008.

##### **B. Formal Plan of Discovery**

On March 28, 2008, counsel for the parties discussed a discovery plan for this case. As a result of these discussions, the parties propose the following discovery plan: Discovery will be



1 needed on the following subjects: (1) the circumstances giving rise to and the facts surrounding  
2 the vehicular accident in question; (2) the plaintiff's physical condition before and after the  
3 alleged accident; and (3) the scope, nature and extent of plaintiff's claim for compensatory relief  
4 and damages. To that end, defendant anticipates propounding interrogatories, requests for  
5 admission, and requests for production of documents, and anticipates deposing the witnesses  
6 plaintiff identified in his initial disclosures. To the extent plaintiff seeks damages for any  
7 physical injuries, defendant will request that he submit to an independent medical examination.  
8 Furthermore, defendant may designate experts in this case.

9 At this time, the parties do not foresee issues concerning disclosure or discovery of  
10 electronically stored information. At this time, the parties expect that production of  
11 electronically stored information in paper form will suffice.

12 The parties request that the usual discovery limitations set forth in the Federal Rule of  
13 Civil Procedure and Civil Local Rules, including the 25-interrogatory limit under Rule 33 and  
14 10-deposition limit under Rule 30, apply.

15 **9. CLASS ACTIONS**

16 Not applicable.

17 **10. RELATED CASES**

18 Defendant knows of no related cases.

19 **11. RELIEF**

20 Defendant seeks financial recovery for property damage and a judgment in its favor.

21 **12. SETTLEMENT AND ADR**

22 \_\_\_\_\_ The parties have not yet participated in any settlement discussions. On April 11, 2008,  
23 the parties filed a stipulation to participate in mediation through the Court-administered ADR  
24 department. Although the parties received a notice that a mediator has been assigned, neither  
25 party has been contacted by the mediator.

26 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

27 The parties consented to the assignment of this case to Magistrate Judge Elizabeth D.  
28 Laporte.



**14. OTHER REFERENCES**

None at this time.

**15. NARROWING OF ISSUES**

None at this time.

**16. EXPEDITED SCHEDULE**

Defendant does not believe an expedited schedule is appropriate for this case.

**17. SCHEDULING**

Proposed fact discovery cut-off: December 12, 2008

Proposed expert discovery cut-off: January 29, 2008

Proposed dispositive motion hearing cut-off: March 3, 2008

Proposed dispositive motion filing deadline: January 27, 2009

Proposed pre-trial conference date: April 7, 2009

Proposed trial date: June 8, 2009

**18. TRIAL**

By statute, trial in this action will be a bench trial. Defendant anticipates that trial will last three to four days. \_\_\_\_\_

**19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

As governmental entities, defendant is exempt from the disclosure requirement of Civil Local Rule 3-16.

**20. OTHER MATTERS THAT MAY FACILITATE DISPOSITION**

None at this time.

Respectfully submitted,  
JOSEPH P. RUSSONIELLO  
United States Attorney

Dated: August 5, 2008

/s/  
JENNIFER S WANG  
Assistant United States Attorney  
Attorneys for Defendant



YORK & BROCK

Dated: August 4, 2008

/s/  
\_\_\_\_\_  
GREGORY BROCK  
Attorney for Plaintiff

**[PROPOSED] ORDER**

The parties' Joint Case Management Statement is hereby adopted by the Court as the Case Management Order for this case and the parties are ordered to comply with this Order. In addition, the Court orders:

Dated: \_\_\_\_\_

\_\_\_\_\_  
ELIZABETH D. LAPORTE  
UNITED STATES MAGISTRATE JUDGE